

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

09/12/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2002-000064

FILED: _____

STATE OF ARIZONA

BARTON J FEARS

v.

MEGAN E MCCARTHY

JAMES P HERNANDEZ

DISPOSITION CLERK-CSC
FINANCIAL SERVICES-CCC
PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #8952888

Charge: DUI

DOB: 11/10/77

DOC: 07/12/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement without oral argument and this Court has reviewed the record of the proceedings from the Phoenix City Court, and the Memoranda submitted by counsel.

The only issue raised by the Appellant concerns the trial judge's denial of Appellant's Motion to Dismiss based upon a violation of Appellant's right to a speedy trial, as guaranteed by Rule 8 of the Arizona Rules of Criminal Procedure. The trial court denied Appellant's Motion to Dismiss on January 17, 2002. Unfortunately, the trial court's log and those few pleadings contained within the trial court's file do not support the trial judge's ruling that specific periods of time were excluded time pursuant to Rule 8.4, Arizona Rules of Criminal Procedure, and that Appellant's rights to a speedy trial were not violated.

Rule 8.2(a) of the Arizona Rules of Criminal Procedure provides:

Every person against whom an indictment, information or complaint is filed shall be tried by the court having jurisdiction of the offense within 150 days of the arrest or service of the summons under Rule 3.1 except for those excluded periods set forth in Rule 8.4 below.

Appellant, Megan McCarthy, was served by summons with a complaint on November 7, 2000 and accused of the crime of Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(1).

Unfortunately, the minimal record on appeal fails to support the exclusion of any periods of time pursuant to Rule 8.4, Arizona Rules of Criminal Procedure. Rule 8.4(d), Arizona Rules of Criminal Procedure permits periods of time resulting from continuances to be excluded. However, the rule providing for continuances requires that a motion be filed in writing

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stating "with specificity the reasons justifying the continuance." Rule 8.5(b), Arizona Rules of Criminal Procedure further requires that continuances be granted only "upon a showing that extraordinary circumstances exists and that delay is indispensable to the interests of justice." The trial court's file failed to disclose that the continuances were granted pursuant to a written motion stating specific reasons justifying the continuances. Additionally, the trial court's record fails to disclose any finding by the trial judge that "extraordinary circumstances exists" and "that delay is indispensable to the interests of justice". Since the requirements of Rule 8.5, Arizona Rules of Criminal Procedure, were not satisfied, time could not be excluded pursuant to Rule 8.4(d), Arizona Rules of Criminal Procedure. Therefore, contrary to the assertions of both counsel in this appeal, it does not appear from the trial court's record that any time should have been excluded time within the meaning of Rule 8. This Court must conclude that the trial judge erred in denying the Motion to Dismiss.

IT IS ORDERED reversing the judgment of guilt and sentence imposed in this case.

IT IS FURTHER ORDERED vacating the trial judge's order denying Appellant's Motion to Dismiss based upon Rule 8 violation.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for purposes of a hearing to determine whether the dismissal shall be with or without prejudice.